

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

Clerk's Minutes
Before the Honorable James O. Browning

CASE NO. CR 19-77JB

DATE: August 1, 2019

TITLE: *USA v. Michael Nissen*

COURTROOM CLERK: C. Bevel

COURT REPORTER: Mary Seal

COURT IN SESSION: 4:03PM-5:35PM

TOTAL TIME: 1 HR 32 MIN

TYPE OF PROCEEDING: [55](#) MOTION to Dismiss, [46](#) First MOTION in Limine , *404B Notice and Notice of Res Gestae Evidence*

ATTORNEYS PRESENT FOR PLAINTIFF(S):

Paul Mysliwiec, Alex Uballez

ATTORNEYS PRESENT FOR DEFENDANT(S):

Ken Gleria, Jack Mkhitarian

PROCEEDINGS:

4:03pm Court in session, counsel enter appearances, defendant present in custody.

4:05pm Supervisory Deputy US Marshal Cozart addresses Court regarding defendant's lack of cooperation, recommendation to keep defendant in shackles during trial.

4:07pm Court responds with concerns of defendant's behavior while in shackles during trial. Requests alternative available.

4:09pm Supervisory Deputy US Marshal Cozart references use of the bandit. Continues to recommend use of shackles during trial.

4:12pm Mr. Mysliwiec responds, wants to play the recorded phone calls for this Court before the Court makes a final decision.

4:13pm Court to call Supervisory Deputy Marshal Cozart back at the end of the hearing.

4:14pm Court gives parties preliminary ruling on Motion in Limine [Doc. 46]. Inclined to grant in part and deny in part.

4:28pm Mr. Mysliwiec responds. Proffers Officer Bird's testimony.

4:33pm Mr. Gleria responds, prefers narrow version.

4:37pm Court recommends Mr. Mysliwiec lead Officer Bird's testimony on traffic stop. Yes, no, open ended questions. Then done with traffic stop.

4:38pm Counsel agree.

4:38pm Mr. Mysliwiec turns to search warrant issue.

4:48pm Mr. Gleria responds. References jury instruction, objects to revolver coming into evidence.

4:51pm Court is inclined to agree to keep revolver out.

4:52pm Mr. Mysliwiec responds, argues for revolver coming into evidence.

4:53pm Mr. Gleria responds.

4:54pm Court will think about it more, however for now, revolver will not come in.

4:56pm Mr. Mysliwiec addresses bomb scare.

4:58pm Court indicates prejudice on this issue goes way up.

4:59pm Mr. Gleria does not want bomb scare coming in, unrelated incident, 403 issue.

5:06pm Mr. Mysliwiec plays video exhibit 9.

5:07pm Court will take under advisement, prejudice is so much, not inclined to let bomb threat in.

5:08pm Mr. Mysliwiec addresses defendant's pro se filing, Motion to Dismiss for Lack of Jurisdiction.

5:16pm Mr. Mkhitarian responds, argues in opposition.

5:19pm Mr. Mysliwiec responds, could introduce T-Mobile records.

5:20pm Mr. Mkhitarian agrees.

5:20pm Court addresses and cautions defendant regarding filing pro se documents.

5:22pm Court returns to shackle on defendant during trial.

5:22pm Mr. Mysliwiec addresses Court, USM has a duty to protect defendants and the public. Defers to USM.

5:25pm Court addresses Supervisory Deputy Marshal Cozart regarding putting the electronic unit on defendant.

5:26pm Supervisory Deputy Marshal Cozart responds, recommends shackles, defendant has to be cooperative when putting bandit on.

5:26pm Mr. Gleria responds.

5:27pm Court will use shackles, and will use curtain around both tables. Reminds counsel to remain seated so that jury does not see defendant is shackles.

5:33pm Counsel have nothing further.

5:34pm Court directs counsel to be present by 8:30 a.m. on Tuesday morning. Counsel should contact the court if they do need anything on Monday.

5:35pm Court in recess.